

DOCUMENT RESUME

G2106 - [A1322286]

[Objection to Allegedly Arbitrary Solicitation Provision].
B-188428. May 5, 1977. 2 pp.

Decision re: Atlas Railroad Construction Co. of Georgia, Inc.;
by Paul G. Dembling, General Counsel.

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: Procurement Law II.
Budget Function: National Defense: Department of Defense -
Procurement & Contracts (058).
Organization Concerned: Department of the Army: Fort Stewart,
GA.
Authority: 4 C.F.R. 20.2(b)(1).

Award of a contract for repair of a utility railroad system was protested because of changes in specifications for the use of new rails. The protest was untimely because it was not raised prior to bid opening, although the basis for protest was apparent before bid opening. (RRS)

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Page II

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-188428

DATE: May 5, 1977

MATTER OF: Atlas Railroad Construction Company
of Georgia, Inc.

DIGEST:

Objection to allegedly arbitrary solicitation provision raised after bid opening but apparent prior to bid opening is dismissed as untimely filed. GAO procedures require that such protests be filed prior to bid opening. 4 C.F.R. § 20.2 (b)(1) (1976).

Atlas Railroad Construction Company of Georgia, Inc., (Atlas) protests any award of a contract under invitation for bids No. DAKF10-77-B-0015 issued by the Procurement Division, U.S. Army, Fort Stewart, Georgia (Army). The solicitation covered the repair of a utility railroad system and specified the use of new rails. It stated, however, that alternate bids for used rail could be made but would be selected only when the bid price of the used rail is at least thirty (30) percent below the lowest bid price for new rail. A similar procurement last year with the same provision regarding used rail was won by Atlas with a bid for new rail.

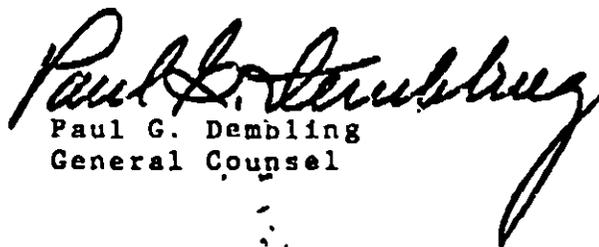
Atlas contends that because used rail was selling for only 14.36 percent below the cost of new rail, it was virtually impossible for a contractor to submit a bid for used rail 30 percent below those contractors proposing to use new rail. Atlas asserts that the requirement is arbitrary. The record indicated that although Atlas discussed the 30 percent factor with the agency's technical personnel it did not protest orally or in writing before the bid opening. Its protest was submitted after the bid opening showed that its bid price of \$540,407.40 for used rail was rejected in favor of a bid of \$631,758.00 for new rail.

Section 20.2 of our Bid Protest Procedures 4 C.F.R. part 20 (1976) requires that protests based upon alleged improprieties which are apparent in the solicitation must

D-188429

be filed prior to bid opening or the closing date for receipt of initial proposals. In our opinion, the basis of Atlas' protest should have been known to it during the preparation of its bid and the matter should have been protested at that time rather than after the bid opening.

Accordingly, we conclude that the protest is untimely and we are closing our file without further action.


Paul G. Dembling
General Counsel